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[WHOLE No. 62.]

Congressional Documents.

PROCEEDINGS OF THE COURT MARTIAL, IN THE CASE OF LIEUTENANT BUELL, 3d INFANTRY, &c.—[Concluded.]

The undersigned are not acquainted with any law requiring the proceedings of such courts to be sent to general headquarters, except the 90th article of war, which requires that the proceedings shall be transmitted to the Secretary of War, "to the end," says the law, that the persons entitled thereto may be enabled, upon application, to obtain copies thereof; and the undersigned are unable to find, either in this or in any other law, authority for any other *disposition or use of such proceedings* than those enumerated in the said 90th article of war; and they believe that any other use which can in any manner affect the party tried, more especially to his injury, is wholly without warrant of law, without precedent in service, and a dangerous innovation of the usages of the army; and the undersigned are confirmed in these views by the law and the custom in the British army, where the whole practice of *revision* is considered of very doubtful expediency, and its exercise is expressly limited by law, as appears by the commentaries of McArthur, vol. 1st, page 135, where it is stated that "In the army, the King or commander-in-chief, delegated with the authority of convening courts martial, have also the power of ordering a review of the sentences pronounced; but this power is limited, as it is declared by the mutiny act that no sentence given by a court martial, and signed by the president thereof, shall be liable to be revised more than once."

It should have been remarked that the English mutiny act commits authority of deciding upon the proceedings of courts martial to the King, which is by him delegated to commanders-in-chief; while, in the army of the United States, authority in cases like the one under consideration is *committed directly by law* to certain commanders, who cannot lawfully be *superseded* in the exercise of it; though, like all other functionaries, they are accountable for their conduct in the exercise of that authority. McArthur says, further, that, previous to the year 1750, "a general commanding in chief was empowered to order a reversal of any sentence by a court martial as often as he pleased, and, on that *pretence*, to keep in confinement a man who had been acquitted upon a fair trial."

The undersigned cannot but perceive, in the new usage attempted to be introduced in the army of the United States, by the order under which they have been assembled, a decline from an enlightened usage to one of comparative barbarism—to a usage which was condemned by the English Parliament nearly one hundred years ago. It is manifest that under the usage attempted to be introduced, a commander, under the *pretence* of a reversal of the proceedings of a court martial, may keep a man (as McArthur more than intimates) in confinement without limit.

The undersigned perceive, in the order under which they have been assembled, a recommencement of this barbarous usage; and, if sanctioned, the proceedings of a court martial may be ordered to be revised, even after the sentence has been executed upon

the party tried; and no accused person can know when he has paid the penalty of the law, if guilty, or when he may consider himself discharged, if innocent. If a court martial, which has been legally *dissolved* by the authority ordering it, and whose prisoner has been released and ordered to duty, may be "REVIVED" and ordered to revise its proceedings, after an interval of two months, a court may be revived after an interval of two years; and the undersigned can see no limit to the abuse which may be engrafted upon such a usage.

In fine, the general order purporting to "*revive*" the court which was *dissolved* by the order of Major General Gaines appears to the undersigned, 1st, to have no authority in law; 2d, to be against the usage of the army of the United States; 3d, to menace the army with a usage under which no rights can be considered sacred, but one which would subject the reputation and the honor of every member of the army to the worst evils that can be inflicted by a barbarous tyranny.

The undersigned would wish that, consistently with their sense of duty, they could submit the above remarks for the consideration of the President without further addition; but it is with the deepest pain and humiliation they feel compelled to invite his attention to the extraordinary document marked "C," as referred to in the order by which they have been assembled, and which is in the following words, to wit:

"HEADQUARTERS EASTERN DEPARTMENT,

"October 19, 1822.

"SIR: I have the honor to put under cover to you the proceedings of the general court martial of which Captain Heileman is president, in the case of Private McCollister.

"You will perceive that notwithstanding the strong expressions 'that the President of the United States cannot, consistently with his own feelings on the subject, sanction, in time of profound peace, the infliction of capital punishment in the army,' contained in a communication from your office, laid before the said court, the court has refused to alter the sentence of McCollister; and, accordingly, that McCollister, notwithstanding the *revision* ordered, remains sentenced to be *shot to death*.

"As this sentence must again go up to the President for his orders in the case, I deem it to be my duty to offer the following statement as an accompaniment to the proceedings of the court.

"On the 30th May last, Lieutenant Harding, being *officer of the day* at Fort Niagara, chastised a private by the name of Moore for some personal insolence; that this chastisement excited a spirit of mutiny on the part of certain individuals of the garrison; that in the course of the early part of the following night (May 30) a plan was laid by those individuals to revenge the chastisement of Moore on Lieutenant Harding; that on hearing a noise in the men's quarters he hastened thither, and was struck and maltreated by the mutineers in the dark; that, on calling one or two officers to his assistance, the three men, McCollister, Goble, and Hibbard, were seized and secured in the guard house of the post; that it does not appear that others of the garrison took an active part in the mutiny; that when these

men were seized and dragged to the guard house the garrison remained firm in its duty, although McAlister, or McCollister, called upon them to rescue and protect him; that the three persons remained in the guard house till some time the following morning, (about 11 o'clock, May 31st,) without any disturbance or unquietness on the part of the garrison, when the said prisoners were brought out, and, by order of Lieutenant Harding, flogged—McCollister receiving one hundred lashes, and the two others about the same; and that these punishments were inflicted in the sight of, or within the knowledge, at the time, of the whole garrison, which remained firm in their duty as on the night before, under the invitations and exhortations of McCollister, which is proof that the spirit of mutiny had not extended to the garrison, if beyond the three prisoners.

"On receiving a report of these transactions, I ordered a general court martial to meet at Niagara, as well for the trial of the mutineers as for that of Lieutenant Harding—the latter charged with those illegal floggings.

"The court 'honorably acquitted' Lieutenant Harding, on the *express* grounds 'that, in the case of Moore, he, Lieutenant Harding, received insolence which deserved chastisement in a civil or military community, and, in the three latter instances, (the floggings inflicted on McCollister, Hibbard, and Goble,) that forcible, and exemplary, and immediate measures were necessary to quell the spirit of insubordination then existing among the men, and for the good of the service.'

"The same court martial sentenced McCollister to be shot to death for the part taken by him in the transactions above detailed, and acquitted the other two prisoners, Hibbard and Goble, or sentenced them to slight punishment not now recollected. (The proceedings in these two cases, and my orders thereupon, are in the Adjutant General's office.)

"On receiving the proceedings of the court in the case of Lieutenant Harding, I determined to order a revision.—(See copy of my *confidential order* to that effect, herewith; and, also, see copies of my orders relative to the trials of Lieutenants Clitz and Griswold, who were likewise charged with similar offences to that of Lieutenant Harding.) The court in the case of Lieutenant Harding (as in that of McCollister, sent back about the same time for revision, by order of the President of the United States) refuse to alter or to change the finding or the sentence.

"A review of the three cases (those of Lieutenants Clitz, Harding, and Griswold) will be sufficient to show that illegal flogging in the army cannot be prevented or punished by the intervention of courts martial. The alternatives are, to take no notice of such offences when reported, or to try some new method of suppressing the mischief. Presuming the second alternative will be preferred, and being perfectly persuaded that it will be useless to send Lieutenant Harding's case back a second time to the same court, if, indeed, to any court martial, I beg leave to suggest the following experiment:

"I recommend that the *senior* officer who concurred in the finding of the court in Lieutenant Harding's case be dismissed from the service of the United States, for protecting in his judicial capacity the illegal and unofficerlike conduct of Lieutenant Harding. The senior officer may be ascertained by beginning with the president of the court, and so on, in the order of rank, (in the descending scale,) and charging him as above before *another* court martial. The judge advocate (or any member of the court) I imagine might be compelled to state, as a witness, how the member had voted on the trial of Lieutenant Harding.—(See the oath of a member and of the judge advocate, Articles of War, 69.) This course, steadily persevered in, and no other known to me, is

likely to suppress the extensive and extending practice of flogging in the army, without even the pretence of a trial.

"If my suggestion be approved, I will immediately cause Captain Heileman to be arraigned before a court, with instructions to the judge advocate to take up the next member, and the next, till he ascertain the *senior* who voted for the total acquittal of Lieutenant Harding.

"If this course be not adopted, I am apprehensive that the case of Lieutenant Harding, which I shall be obliged to lay before the troops, in orders, will give a general discontent, and cause an increase of the evil of desertion.

"I have the honor to be, sir, respectfully, your most obedient servant,

"W. SCOTT.

"The ADJUTANT GENERAL U. S. Army."

From the tenor of the order under which they have been assembled, the undersigned perceive that the letter above cited is not defined as conveying the *views* of the *Executive*, while two other documents, "A" and "B," are expressly defined as conveying his *views*. The peculiar phraseology of the order in reference to document "C" makes it difficult for the undersigned to understand by what authority that document has been laid before them. It would seem that after the President of the United States had seen fit to order the court to be *reorganized*, some subordinate authority had taken the liberty to introduce among the documents conveying the views of the Executive a document which is not to be regarded by the undersigned as conveying those views, and they are at a loss to know whose views that document is intended to convey, or why they have been subjected to the mortification of having it read to them, when, under the order for their being assembled, a duty was required, whose execution was expected to be conducted under the solemnities of an oath, "without partiality, favor, or affection."

The undersigned would willingly believe that the magnitude of the responsibility of sending such a document to be read before a body of Jurors was not duly appreciated, and believe it only necessary to present for the consideration of the President the fact that such a document has been read to them, to ensure its immediate withdrawal and suppression; but they cannot close their remarks upon the subject without adverting to the proceedings of the British Parliament, as recorded by McArthur, in the same connection with the extract already cited from that judicious and enlightened commentator upon English martial law, to wit: "On the 23d of January, 1750, the House of Commons resolved itself into a committee on the mutiny bill, when a debate took place on the Secretary of War proposing to add these words: 'and that no sentence given by any court martial, and signed by the president, shall be liable to be revised *more than once*.' Lord Egmont moved, by way of amendment, to leave out the words '*more than once*;' and the principal arguments urged in favor of the amendment were, that the revival of a sentence of a court martial might be fatal to the person tried, for it presupposes the sentence to be not sufficiently severe; were it (the sentence) to lean to the extreme of rigor, there would be no necessity for a revival, because the commander-in-chief could always mitigate or pardon. There was very little difference between a revival and a new trial; and that members in the intervening time between the sittings of the trial in the first instance, and the revival in the second, might be influenced or *intimidated* to alter a lenient sentence to one of extreme rigor.

"On the question, however, being put, that the words '*more than once*' stand part of the motion, it was, upon a division, carried in the affirmative, by 177 to 125."

It was probably not supposed by the members of the British Parliament that an effort to intimidate a court would ever be made, or that such an effort could ever be successful, while it was believed, no doubt, that officers of the army in error on some point of law would be glad of an opportunity, on a revival, to correct such error, on its being pointed out by men of longer experience, and better acquainted with law than themselves, and hence one revision was permitted.

In the case of Lieutenant Buell, one revision was had under the orders of the proper authority, and the court was regularly dissolved, and Lieutenant Buell ordered to duty.

The court is now ordered to be "reorganized," in the language of the honorable Secretary of War, endorsed upon the back of the proceedings, *but*, in the language of the Adjutant General, the court is ordered to be "*revived*;" and, before entering upon a second revival of its proceedings, a letter is ordered to be read to the members, admitting of but one construction, and the undersigned can see in it only a realization of the worst anticipations of Lord Egmont, nearly one hundred years since, to wit: an effort to "influence or intimidate" the court, demonstrating in the most emphatic manner the necessity for the restriction imposed by British law, by which the power of a revision of the proceedings of a court martial is limited, and that only one revision can be had; and the undersigned are slow to believe that so wise and necessary a provision can be disregarded in this land of law, justice, and freedom, without the most fatal consequences.

It is not the wish of the undersigned to make any remarks upon the letter of the 19th of October, 1822, beyond what may entirely comport with propriety; but as, from the tenor of the letter and its transmission to be laid before the undersigned, it may be inferred that the opinions expressed in the letter have been verified by subsequent history of the army since the date of the letter, the undersigned feel called upon to state that the practice of flogging in the army has been entirely abated; and to whatever may have been the cause, the whole intercourse between the officers and men has, within the last twenty or twenty-five years, entirely changed; that as a *practice*, unlawful violence does not occur; although in very rare instances, and under personal excitement, isolated cases of abuse may happen, as they do in civil life.

In presenting these views, the undersigned have endeavored to divest their minds of all improper bias or unbecoming feelings, and to submit for the consideration of the Executive their opinions in the most respectful language, fully persuaded that the questions involved extend in their influence far beyond the merits of the case of Lieutenant Buell. The true question being, as to whether a court that has been legally dissolved, and its prisoner released from arrest and ordered to duty by competent authority, can be "*revived*," (as the order expresses it,) and ordered to revise its proceedings, and that too under a threat of dismissal of at least one of its members, if the original sentence be not altered.

W. W. LEAR, Major 3d infantry.

HENRY BAINBRIDGE, Capt. 3d infantry.

J. W. COTTON, Capt. 3d infantry.

G. MORRIS, Capt. 4th infantry.

C. H. LARNED, Capt. 4th infantry.

R. M. COCHRANE, 1st Lieut. 4th infantry.

W. H. GORDON, 1st Lieut. 3d infantry.

D. S. IRWIN, Brevet 1st Lieut. 3d infantry.

S. D. DOBBINS, 1st Lieut. 3d infantry.

THOMAS JORDAN, 2d Lieut. 3d infantry.

H. RIDGELY, 2d Lieut. 4th infantry.

R. H. BACOT, 2d Lieut. 3d infantry.

JRNKS BEAMAN, 2d Lieut. 4th infantry.

ADJUTANT GENERAL'S OFFICE,

Washington, October 13, 1843.

SIR: The original proceedings of the general court martial in the case of Lieutenant Buell, 3d infantry, which were transmitted to Major General Gaines, July 27, for you, were not, it appears, enclosed in your letter of September 19, communicating the decision of the court; and I am directed to say, that you will immediately send them to this office.

I am, sir, very respectfully, your obedient servant,

L. THOMAS, Assist. Adj. Gen.

Captain H. SWARTWOUT, 3d Infantry,

Judge Advocate, Jefferson Barracks, Mo.

JEFFERSON BARRACKS, Mo., Oct. 24, 1843.

SIR: I have the honor to acknowledge the receipt of Major Thomas's letter of the 13th instant, and, as directed therein, to transmit herewith "the original proceedings of the general court martial in the case of Lieutenant Buell, 3d infantry."

These proceedings were not enclosed with my letter of the 19th of September, for the reason that, when forwarded to me, they were accompanied by a letter from Major Cooper, assistant adjutant general, instructing me to lay them, with certain other papers, before the general court martial revived by general orders No. 51. As the officers named in that order did not assemble as a court martial, I could have no official connection with them, and, consequently, as yet, have had no opportunity of complying with the instructions conveyed to me as above mentioned. It is in compliance with these instructions that I have retained them in my possession until an order from proper authority should direct their disposition.

I have the honor to be, sir, very respectfully, your obedient servant,

H. SWARTWOUT,

Capt. 3d Inf., Judge Ad. General Court Martial.

Brig. Gen. R. JONES, Adj. Gen. U. S. Army.

ADJUTANT GENERAL'S OFFICE,

Washington, November 18, 1843.

SIR: The recent proceedings of the officers composing the court martial in the case of 2d Lieutenant Don Carlos Buell, 3d infantry, having been duly submitted to the Secretary of war, and being yet under consideration, I am now instructed to direct that you notify the several members that they will disperse for the present, or until the decision and further orders of the President relative to the revival of the court, under "general orders" No. 51. of July 27, 1843, shall be communicated to them.

I am, sir, very respectfully, your obedient servant,

R. JONES, Adj't General.

Colonel S. W. KEARNY,

Commanding 3d Military Depart., St. Louis, Mo.

ADJUTANT GENERAL'S OFFICE, December 30, 1843.

True copies, from the records of the Adjutant General's office.

R. JONES, Adj. General.

WAR DEPARTMENT, December 23, 1843.

Having been asked by the President for my views in relation to the case of the court martial on Lieutenant Buell, I beg leave to submit the following:

Lieutenant Buell was charged with the offence of striking a soldier. On his trial, the fact was clearly proved, and found to be so by the court, yet the court honorably acquitted him. The acquittal was so manifestly improper that the commandant of the department disapproved of the finding, and expressed that disapprobation in very decided terms. He directed the court to reconsider their decision, and to state upon what authority of law or orders they

could justify the accused in taking from the guard couse and striking with his sword a soldier, &c.; and stating, if none such should be found, that it was the duty of the court to pronounce such punishment to be contrary to law.

The court did reassemble, and, in their proceedings, undertake to argue the question with the commandant of the department. After protesting against his action in ordering the reconsideration, they say, *by way of recital*, and not as a direct finding, that, "while they adhere to their first decision," they decline furnishing any other grounds for their *verdict* than such as are afforded by the evidence, &c.

The commandant of the department, by general orders of the 10th of July, 1843, disapproved the proceedings, relieved the accused from arrest, and dissolved the court. The proceedings, with the decision of the commandant of the third department, were forwarded to Washington, and submitted of course to the Commanding General. He considered the case one deserving of further notice; and accordingly, by his advice, and the direction of the Secretary of War, the order from the Adjutant General of the 27th day of July was issued, directing the court to be organized again, for the trial of the accused, and giving the detail of the officers composing the court. This order might be treated either as an order for reassembling the former court, or a new order and detail for a court martial for the trial of the accused. On the order reaching the third department, the court was assembled; and, instead of proceeding to the trial of the accused, they drew up a paper in the nature of a protest against proceeding to do so, which will be found among the accompanying papers. The views of the Commanding General in relation to this case, having been requested, are also subjoined.

I considered that the decision of the court martial, acquitting the accused, after such full and conclusive evidence of his guilt had been adduced, as entirely erroneous, and calculated to do great injury to the service. If officers of the army, from a mistaken sympathy for a brother officer, can be induced to violate all rules of law, the service must suffer; because the sense of moral obligation is lessened, if not destroyed, when the members of a court, sworn to decide according to the evidence, refuse to do so, but decide according to their feelings or prejudices. Here a positive law had been violated, and yet the offender was acquitted by his brother officers.

The proceedings which had taken place, being disapproved by the commandant of the department, did not, in my judgment, interpose any difficulty in the way of putting him on his trial again for the offence. There is little, if any, analogy between the proceedings in a criminal prosecution in a court of law and the proceedings before a court martial. In the former case, when the jury renders a verdict of acquittal, the court has nothing to do but record the verdict, and discharge the accused: the court has not to pass any decision of approbation or disapprobation on the finding.

In a proceeding by court martial, the sentence is wholly inoperative until approved or disapproved by the officer ordering the court. The action of that officer is as much a part of the proceedings as the finding of the members of the court. The two must be combined to make a whole. The finding of the court having been disapproved, was, in law, no acquittal.

The only analogy, then, which could be drawn between this case and that of an indictment in a criminal court might consist in this: that the proceedings might be somewhat assimilated to a case where a jury, after hearing the evidence, had been unable to agree, and had been discharged, and the accused had not been recognised for further appearance. In such a case, if the indictment were for a

misdemeanor, there is no question but that the accused could be again put on his trial. Such is the decision in all the cases to be found on the subject.

Even in capital cases, it has been held by some courts that, if the jury be discharged in consequence of being unable to agree, the prisoner can be put on his trial again. (See Goodwin's case in New York, and United States *vs.* Haskell, 4 Wash. C. C. R., 402.) Other courts, however, have held that he cannot be again tried in capital cases, (see the case of Commonwealth *vs.* Cook, 6 Sergeant and Rawle, 580;) whilst all the cases concede the point, that in misdemeanors he can be again put on trial.

In the case of the United States *vs.* Haskell, to which reference has already been made, the circuit court of the United States held that, in cases of necessity, the courts may discharge juries as well in capital cases as in others, and that such discharge cannot be placed as *autrefois acquit*; and that the term "twice in jeopardy," under the Constitution, means *twice tried and twice convicted, with judgment thereon*, and not twice tried only.

In cases of misdemeanor, no man is ever put in jeopardy of life or limb by any trial or conviction, as the punishment of misdemeanors never extends to loss of either.

In trials by a general court martial, if the court acquit the accused, the officer ordering the court can disapprove the finding, and order the court to assemble and reconsider the case. If he disapprove, and discharge the court and the accused, it is believed that the head of the department can order the court to come together again, either as a new court or as the old one, and try the offender, there being no judgment of acquittal.

Simmons, in his treatise on courts martial, when speaking of cases sent back for revision, in which the courts have adhered to their former decision, says: "The opinion and sentence of a court martial have on other occasions been disapproved and not confirmed, the effect of which is to nullify the sentence."

The same writer states, what is true, that, in the British service, the authority to order a revision does not extend to a second revision; but this is by virtue of what is called their mutiny act of 1750, which is restrictive in its terms, and but for which "the sentence might have been returned for revision any number of times," as was the case before its passage. There is no such restriction in our Rules and Articles of War; and therefore, in our service, the proceedings may be remanded as often as the superior authority shall deem necessary for attaining the purposes of justice. If this power shall ever be used for purposes of oppression, it would afford a proper occasion for further legislative provision on the subject, if the means now provided by the Constitution and laws did not afford sufficient redress.

In construing the 87th article of the Rules and Articles of War, which says that "no officer, &c. shall be tried a second time for the same offence," the rule adopted necessarily construes this a complete trial, which includes as well the finding of the members as the approval of the sentence by the proper officer, and not a partial and incomplete one. It means *tried, with judgment of approbation of the decision thereon*, or else all the decisions in criminal proceedings have no analogy to it.

But whether this were so or not, the court was bound to assemble agreeably to the order, and proceed to the trial. If the accused claimed the benefit of the former finding, he could have urged it in his defence; and if it were good, it would then avail him. The conduct of the court in refusing to proceed was highly insubordinate, and the terms in which they have couched their protest altogether improper.

The whole subject is one involving, as I think, the best interests of the service; and unless the evils which the conduct of the members of the court tends to encourage be suppressed, the great principles of military discipline and regard for the laws of the country will be trampled under foot with impunity.

I deem the order of the 27th July last, for the organization of the court martial, as perfectly proper and legal, and, under the circumstances, of the case, necessary. But, judging by their conduct, I utterly despair of awakening the members of that court to a proper conception of their duty in the case.

J. M. PORTER.

WASHINGTON, January 10, 1844.

Upon full consideration of the circumstances and proceedings of the court martial in the case of Lieutenant Buell, and without deciding the abstract question of the right of the department to reassemble the court after its dissolution by General Gaines, and to devolve upon it a rededication, I can see no good to the service in again requiring the court to pass upon the case; and this is the result, whether the same court be reassembled or a new court be convened, composed of the same members. The members have twice expressed their opinions, and there is no ground to believe that they would change them.

Let all further proceedings, therefore, against Lieutenant Buell, for the offence with which he is charged, cease.

JOHN TYLER.

Remarks on the "protest" signed by Major Lear, president, and the other members of the court martial in the case of Lieutenant Buell, 3d infantry.

HEADQUARTERS OF THE ARMY,

December, 1843.

It is generally understood, at Jefferson barracks, that this protest was drawn up by an officer of the 3d infantry, (not a member of the court,) in concert with a certain general, to stimulate disobedience, and in the name of the court to revenge themselves on the undersigned. That insidious purpose was greatly favored by the accidental composition of the court; eight of whose thirteen members were of the regiment of the prisoner and the penman—the same 3d infantry which the undersigned, in general orders No. 53, (August 20, 1842,) had, upon sufficient information, denounced as tolerating the illegal practice of flogging, and Lieutenant Buell was prosecuted for beating one of his men! (Please see the second paragraph of that order, hereto annexed.) Hence, the evident determination of the court, and the protest, in opposition to that order, to screen the prisoner. Hence the gross assumption and sarcasm, (at page 30 of the protest,) that, "it would seem, after the President of the United States had seen fit to order the court to be reorganized, some subordinate authority [the insinuation is against the undersigned] had taken the liberty to introduce among the documents conveying the views of the Executive a document [C] not to be regarded," &c.

It will be seen by the President's order (imbodying in the protest) for reconvening, &c., that three documents were communicated to the court, "conveying the views of the Executive:" A, general orders No. 2, January 6, 1843, to show how promptly a court martial had punished a major for striking one of his men—the only error of a long and gallant career; B, general orders No. 4, January 17, 1843, to show that, although, in the first instance, another court had acquitted a young officer (against law and evidence) on the charge—flogging a man—yet, on being reconvened, the court did its duty, and decreed what was deemed an adequate sentence; C, report on certain cases of flogging, (which a court had re-

fused to punish,) made by the undersigned, October 19, 1822, suggesting a last remedy for suppressing the evil. This is the paper which the protesters insinuate that the undersigned caused to be smuggled in among the documents communicated by the Executive,—(A and B.)

Now, if the writers of the protest under consideration had not been utterly blinded by malice, they would have seen, at page 3 of the document B, described above, (it is in print, hereto annexed, and admitted to have been communicated by the Executive,) that, in directing the court therein mentioned to review and to revise its acquittal of Lieutenant A., Mr. Secretary Spencer says, under his sign manual, "the Executive directs that copies of communications of General Scott, of October 19, 1822," &c., "be furnished" to that court, which, in the first instance, like Lieutenant Buell's court, acquitted the prisoner against law and evidence! And this communication or report, made by General Scott, October 19, 1822, is the identical document C, which the protesters (page 30) say, with so much indignation, that they "believe it is only necessary to present for the consideration of the President the fact that such document has been read to them, to ensure its immediate withdrawal and suppression!" It only remains to add, that document C is imbodyed in the protest, and, when read, will speak for itself. If there be a milder but effective manner of suppressing flogging in the army than that therein suggested, the undersigned, as always heretofore, will be ready to give to it his preference and support. The protesters, in refusing, under the orders of the Executive, to reconsider their honorable acquittal of Lieutenant Buell, against law and evidence, resort to (besides the assumption and sarcasm signalized above) many special pleas and subtleties.

1. That they, (the protesters,) having been dissolved as a court, by competent authority, (Brevet Major Gen. Gaines, commanding at the time a department,) that court cannot be revived or reorganized.

There is no express provision of law on the subject. The 65th article of war, amended by the act of May 29, 1830, (*Cross's Military Laws*, pp. 117, 225,) furnish the only statutory authority for appointing or organizing army general courts martial. Under that article, the President himself is not, in terms, authorized to call such tribunal into existence. He derives his power from the Constitution; for if, "any general commanding an army, or colonel commanding a separate department, may appoint general courts martial," (article 65,) *a fortiori*, so may the "commander-in-chief of the army and navy of the United States." The highest functionary may do that which is delegated by the article of war to subordinates—the subject-matter appertaining ordinarily, and of necessity, to the office of "commander-in-chief," created by the Constitution: hence the numerous courts martial appointed by Presidents, before the act of 1830, (referred to above,) which needlessly gives him that power in certain cases; hence, too, he may disapprove all acts of inferiors which are against law and discipline, and apply lawful and necessary remedies. He had the right to disapprove the dissolution of the court that tried Lieutenant Buell, and acquitted him against law and evidence, (all legal and necessary means not having been exhausted to induce that court to do its duty;) and if he had the right, as the protest (p. 21) admits, to appoint a new court for the offence in question, it was certainly better to reorganize the old members into such court; because, if he should ultimately be obliged to deal rigorously with a court for refusing to enforce law, justice and policy required it should be against the first offenders in the premises. [See the endorsement of the Secretary of War, under that of the undersigned, which brought this case to the notice of the Executive. Both will be found on

General Gaines's order (copy transmitted to the Adjutant General) which dissolved the court.]

The argument of the protest, that the President might have appointed a new court for the trial of the case *de novo*, but could not reconvene the old court to reconsider its illegal finding, is not only subtle, but involves an absurdity. The old members were as legally liable to the new detail as they were to the former one, and they certainly were not likely to be objected to by the prisoner, towards whom they had shown the most remarkable bias, against law and evidence, any where to be found on the records of courts martial.

The President, then, in ordering the members of the old court to reconvene, and to reconsider their former verdict, violated no statute and no principle.

2. The protest, after admitting, as above noticed, "the principle that when the proceedings of a court martial are disapproved, *for illegality, by the officer ordering the court*, the proceedings are void, and of no effect, and that a *new* trial may be ordered by another court," proceeds, in the same page, (21,) thus: "But when the proceedings, though disapproved, are nevertheless confirmed, and the court dissolved, the trial is considered by law and usage as having been completed, and the accused cannot again be put in jeopardy without a violation," &c.

The order of Brevet Major General Gaines (imbodyed in the "protest," between pages 14 and 19) disapproves the foregoing decision—the honorable acquittal by the court, and the refusal to revise the same, founded on "desultory arguments," "contrary to law, and contrary to the evidence upon the record of the court."—Page 15. Again, at page 16, he says: "The honorable acquittal of the accused being obviously *contrary to the letter and spirit of military law*," &c. The proceedings then were (against the assumption of the "protest," page 21) "disapproved, *for illegality*, by the officer ordering the court;" and the other assumption of the protest, [same page,] that "the proceedings, though disapproved, are nevertheless confirmed in the order that dissolved the court, [the same order,] is equally and utterly destitute of foundation. There is much of *disapprobation* in the order, but not a syllable of *confirmation* or *approval*."

The "protest," under this second head, has then run into an error worse than a subtlety: it makes a false assertion.

3. *Simmons on Practice of Courts Martial*, (edition of 1843,) says, at the beginning of chapter XII, the proceedings of courts martial are not liable, in the British army, to be revised more than once. "Previous [he continues] to 1750, this limitation did not exist; the sentence might have been returned for revision any number of times. The 16th clause of the mutiny act is not, therefore, as some have imagined, an *enabling*, but a *restrictive* clause. The power of the superior authority to order a revision of the sentence of a court martial is, in some degree, analogous to that of a judge in a court of civil judicature, who may remand a jury for the reconsideration of their verdict; but this power of the judge is not limited to one revision."—Page 390.

Now, it is sufficient to say, in respect to the restriction, as above, of 1750, that there is nothing of the kind known in the United States; that our Rules and Articles of War, borrowed from the British code, have repeatedly been before Congress—June 30 and November, 1775; September 20, 1776; April 14, 1777; June 18, 1777; April 12, 1785; May 31, 1786;

* This order by General Gaines was endorsed and approved by General Scott, July 22, 1843, with the exception of the dissolution of the court. General G. could not, at the date of his order, connect General S. with the case of Lieutenant Buell; but as soon as he found (see his letter to the President, August 15, 1843) that the court was to reconvene, by order of the President, on the presentation of the case by General Scott, General Gaines saw the possibility of getting up a mutiny against General Scott, and instantly joined the protesters.

April 10, 1806, and May 29, 1830; and that not one of those many revisions has adopted the British clause, in respect to courts, first introduced into the mutiny act of 1750. The practice of our army remains, therefore, in respect to revisions of sentences, "analogous to that of the judge in a court of civil judicature," as in England and in all of these United States.

4. The revision of the finding, acquitting Lieutenant Buell, ordered by the President, is, according to the protesters, tantamount to a trial, the second time, of the same offence.

We have seen, under the first head, above, the admission of the protesters, which destroys this fourth objection.

The fifth amendment to the Constitution declares: "Nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb." And the 87th article of war prohibits simply, "a second trial for the same offence."

But what constitutes a *first* trial before a general court martial? The acceptance, the approval, or the confirmation of the finding of the court, by the authority pointed out in the 65th article of war, is an indispensable element,* and we have seen, under the second head, above, that the acquittal of Lieutenant Buell has received no such sanction.

5. The protesters are indignant that the endorsement by the Secretary of War on General Gaines's order dissolving the court, like the suggestion contained in General Scott's report of October 19, 1822, (document "C,") looks to the possible exercise of the President's power to dismiss in cases where courts martial wilfully and perversely acquit officers for illegal floggings, against law and evidence. President Monroe, with the same document "C" before him, strongly intimated the same thing, as may be seen in the document "B," page 8, hereto annexed.

GENERAL REMARKS.

On the effect of the dissolution of courts, by competent authority, pending the trial of cases, see 2 *Story's Com. on the Constitution*, page 235. "Strict forms," "technical rules and quibbles," as in the impeachment of Warren Hastings,† are there strongly condemned.

* In 1826, Sergeant Donica, at Pensacola, wilfully shot Major Donoho dead. By a general court martial, appointed by General Gaines, the murderer was, after defence by able counsel, sentenced to be hung. (The charge was—beginning and exciting mutiny, 7th Article of War—not striking &c., under the 9th art.) The sentence under the 65th art. necessarily came up to President Adams. In his name, Mr. Sec. Barbour endorses the proceedings—let the prisoner be turned over to the civil authority of Florida, with the evidence, "and the President, in the mean time suspends giving any directions as to the proceedings of the general court martial."

Sergeant D. was next tried by the civil court, defended by able counsel, and, notwithstanding the plea of a former trial, sentenced and hung!

To a call on the part of the Senate for the proceedings of Lieut. Col. Brandt's court (never approved, or published in orders,) President Van Buren answered, until approved, there was no trial. This has always been the understanding and judgment of the army. (a)

(In support of that "understanding" of the army, see the opinion of the Attorney General (Mr. Wirt) in the case of Major Nye Hall, September 14, 1818. He says, speaking of *approvals*—"never, until then, is the sentence complete and final." *Opinions of Attorney's General* p. 173. Hundreds of special instances might be cited to the same effect, but only one; a recent case, will be added: General Scott, May 20, 1843, (General Orders, No. 31) acting on the trial of Major Payne, said:—"The General-in-chief of the army approves the proceedings, the findings and the sentence of the court in this case, but reluctantly, and only to give to them legal effect"—that is, to prevent a new trial, or revision of the old one. This was written and published months before the case of Lieutenant Buell.

(a) The president of Lieutenant Buell's court (Major Lear) was a member of Sergeant Donica's court!

† This case quadrates remarkably with that under consideration. The dissolution of Parliament as effectually dispersed the Peers to their respective homes, and annihilated for the time the court of impeachment, as General Gaines's order, prematurely dissolving Lieutenant B.'s court, sent its members to their respective regiments. A new Parliament being summoned, the Peers resumed the impeachment; and so was Lieutenant B.'s court, on being reconvened by the Executive, bound to resume what had been disapproved, and therefore remained unfinished.

It cannot be doubted that the protesters felt a security against all correction for their acquittal of the prisoner, against law and evidence, *in their numbers, and under their oath of secrecy*.^{*} Hence their strong reprobation of General Scott's report of October 19, 1822, (document "C,") which suggests an effective correction.

Certainly, in this country, there can be no flagrant public wrong without some adequate remedy. The Justices of the Supreme Court are made by the Constitution in a high degree independent; yet if one of them were wilfully to charge a jury to find a verdict against law and evidence, he would be liable, on impeachment, to be removed from the bench, and rendered forever incapable of holding "any office of honor, trust, or profit, under the United States." Are members of courts martial more independent in their judicial capacities than the Judges of the Supreme Court? That the former are sometimes severely handled for their ignorance or contempt of law, see the celebrated case (that great constitutional lawyer, Lord Chief Justice Willes, presiding) reported in 1 *McArthur on Courts Martial*, p. 268, and ap. xxiv.

The undersigned has, from the moment he first read the "protest" in question, considered Lieutenant Buell's offence entirely merged in the more serious one committed by the protesters. If their conduct should go before the army without any evidence that a proper correction had been applied, it may be in vain, afterwards, to send to any court martial any case of flogging, no matter how severe, or under what circumstances inflicted. All will see that the practice has been virtually sanctioned.

It is due to the young lieutenant (Buell) that it should be here added, that he bears a high character in his regiment for intelligence and moral and military deportment.

WINFIELD SCOTT.

GENERAL ORDERS No. 53.

HEADQUARTERS OF THE ARMY,

WASHINGTON, August 20, 1842.

1. Intimations, through many channels, received at general headquarters, lead to more than a suspicion that blows, kicks, cuffs, and lashes, against law, the good of the service, and the faith of the Government, have in many instances, down to a late period, been inflicted upon private soldiers of the army, by their officers and non-commissioned officers.

2. It is due to the line, generally, to add, that those intimations refer almost exclusively to the 2d dragoons and 3d infantry.

3. Inquiries into the reported abuses are in progress, with instructions, if probable evidence of guilt be found, to bring the offenders to trial.

4. It is well known to every vigilant officer that discipline can be maintained (and it shall be so maintained) by legal means. Other resorts are, in the end, always destructive of good order and subordination.

5. Insolence, disobedience, mutiny, are the usual provocations to unlawful violence. But these several offences are denounced by the 6th, 7th, and 9th of the Rules and Articles of War, made punishable by the sentence of courts martial. Instead, however, of waiting for such judgment, according to the nature and degree of guilt, deliberately found, the hasty and conceited, losing all self-control and dignity of command, assume that their individual importance is more outraged than the majesty of law, and act at once as legislators, judges, and executioners. Such gross usurpation is not to be tolerated in any well-governed army.

6. For insolent words, addressed to a superior, let the soldier be ordered into confinement. This, of

^{*} This oath may be absolved "in a due course of law." See the oath, 69th article of war.

itself, if followed by prompt repentance and apology, may often be found a sufficient punishment. If not, a court can readily authorize the final remedy. A deliberate or unequivocal breach of orders is treated with yet greater judicial rigor; and, in a clear case of mutiny, the sentence would, in all probability, extend to life. It is evident, then, that there is not even a pretext for punishments decreed on individual assumption, and at the dictate of pride and resentment.

7. But it may be said, in the case of mutiny, or conduct tending to this great crime, that it is necessary to cut down, on the spot, the exciter or ring-leader. First order him to be seized. If his companions put him into irons or confinement, it is plain there is no spread of the dangerous example. But should they hesitate, or should it be necessary in any case of disobedience, desertion, or running away, the object being to secure the person for trial, as always to repel a personal assault or to stop an affray, in every one of these cases any superior may strike and wound, but only to the extent clearly necessary to such lawful end. Any excess, wantonly committed, beyond such measured violence, would itself be punishable in the superior. No other case can possibly justify any superior in committing violence upon the body of any inferior, without the judgment of a court, except that it may sometimes be necessary, by force, to iron prisoners for security, or to gag them for quiet.

8. Harsh and abusive words, passionately or wantonly applied to unoffending inferiors, is but little less reprehensible. Such language is at once unjust, vulgar, and unmanly; and in this connection, it may be useful to recall a passage from the old *General Regulations for the Army*:

"The general deportment of officers towards juniors or inferiors, will be carefully watched and regulated. If this be cold or harsh on the one hand, or grossly familiar on the other, the harmony or discipline of the corps cannot be maintained. The examples are numerous and brilliant, in which the most conciliatory manners have been found perfectly compatible with the exercise of the strictest command; and the officer who does not unite a high degree of moral vigor with the civility that springs from the heart cannot too soon choose another profession, in which imbecility would be less conspicuous, and harshness less wounding and oppressive." (*Edition 1825.*)

9. Government not only reposes "special trust and confidence in the patriotism, valor, fidelity, and abilities, of" army officers, as is expressed on the face of commissions, but also in their self-control, respect for law, and gentlemanly conduct, on all occasions. A failure under either of those heads ought always to be followed by the loss of a commission.

10. At a time when, notwithstanding the smallness of the establishment, thousands of the most promising youths are desirous of military commissions, the country has a right to demand, not merely the usual exact observance of laws, regulations, and orders, but yet more—that every officer shall give himself up entirely to the cultivation and practice of all the virtues and accomplishments which can elevate an honorable profession. There is in the army of the United States neither room nor associates for the idle, the vicious, and disobedient. To the very few such, thinly scattered over the service, whether in the line or the staff, these admonitions are mainly addressed; and let the vigilant eye of all commanders be fixed upon them. No bad or indifferent officer should receive from a senior any favor or indulgence whatsoever.

11. The attention of commanders of departments, regiments, companies, and garrisons, is directed to the 101st of the Rules and Articles of War, which

requires that the whole series shall be read to the troops at least once in every six months.

WINFIELD SCOTT.

GENERAL ORDERS No. 4.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
WASHINGTON, January 17, 1843.

I. At the general court martial which convened at Fort Moultrie, South Carolina, on the 22d of November, 1842, pursuant to "general orders" No. 71, of November 5, 1842, and of which Major John Erving, 3d artillery, is president, was arraigned and tried 2d Lieutenant George W. Ayers, of the 3d regiment of artillery, on the following charge and specification, preferred by Major General Scott:

CHARGE: "Violation of law and disobedience of orders."

Specification. "In this: that 2d Lieutenant Geo. W. Ayers, of the 3d regiment of artillery, being the officer of the day, did, with his drawn sword, at Fort Moultrie, South Carolina, on the twenty-third day of September, eighteen hundred and forty-two, cut at, strike, wound, and abuse, Private John Goldsmith, of company D, 3d regiment of artillery, a prisoner in charge of the guard, without authority of law, and in violation of the provisions of general orders No. 53, from headquarters of the army, dated August 20, 1842."

To which charge and specification the accused pleaded "not guilty."

FINDINGS AND DECISION OF THE COURT.

The court, after mature deliberation on the evidence adduced, find "the specification proved, except the words 'cut at' and 'abuse,' but attach no criminality thereto, the state of the garrison on that day and the disorder existing being sufficient, in the opinion of the court, to justify the acts of Lieutenant Ayers; and *not guilty* of the CHARGE, and does therefore acquit 2d Lieutenant George W. Ayers, of the 3d regiment of artillery."

II. The proceedings of the court having been duly laid before the President of the United States, the following are his orders in the case:

"WAR DEPARTMENT, December 13, 1842.

"The proceedings of a general court martial held on the 22d day of November last, and continued to the 28th of the same month, convened for the trial of 2d Lieutenant George W. Ayers, of the 3d regiment of artillery, have been read, and maturely considered.

"The President is surprised at the great irregularities which occurred during the trial and at the judgment of the court.

"The accused was permitted to contradict a witness called and examined by himself, by proving that at a previous time, and when not under oath, the witness had given an account of the transaction different from that to which he testified.

"The opinion of Lieutenant Colonel Gates upon the very point at issue before the court was allowed to be proved by him, and, what is still more extraordinary, the statements of the accused himself of the transaction for which he was arraigned, given on a former trial of the soldier whom he was charged with having struck with his sword, were received in evidence. It is scarcely necessary to say that these irregularities were palpable violations of the rules and principles which govern all trials in any court, civil, criminal, or military, and are utterly subversive of law and justice.

"The court seems to have labored under a misapprehension fatal to the rights of every officer and soldier of the army, and which, if indulged, will render the military force odious and intolerable.

"The person of every human being living under

our laws is protected by them from outrage. No man can assault another, or inflict any bodily injury, without the express sanction of the law. This authority is given in a few special and well-defined cases. An officer of the army has no more right to strike a soldier or another officer than he has to strike a private citizen. In either case, his justification must be, that it was indispensable for self-defence, or to prevent the commission of a crime; and the same circumstances which justify blows upon a soldier will justify them upon a commissioned officer of inferior grade to the one who inflicts them. In principle, there is not a shade of difference. The officer and the private are protected by the same law, and may be resisted and prevented from committing offences under the same circumstances. The rules, therefore, that a court establishes for privates, it establishes for officers.

"So highly does the law of this country regard the person of the private, that it has denied even to courts martial the authority to inflict lashes, except in the single case of desertion. (See chapters 74 and 159, in Cross's Collections of Military Laws.) It would be strange, indeed, that a single officer might do that which is forbidden to a legally constituted court. If such direct and unequivocal violations of law are sanctioned, and such practices are continued, it will not be long before the country will rid itself of a body of men who would appear to have so little respect for its institutions.

"The court has obviously not sufficiently discriminated between evidence that tends to mitigate the offence and that which would justify it. The former should be taken into consideration when awarding punishment, and may furnish ground for recommendations to Executive clemency; but it cannot and should not be allowed to influence the question of fact, whether blows were inflicted without the urgent and pressing necessity which the law requires.

"The President wholly disapproves the finding of the court martial, and directs that they revise and reconsider their proceedings; and, that they may be fully informed of the views heretofore entertained on the subject by the Executive, he directs that copies be furnished the court of communications of General Scott of October, 19, 1822, in the cases of W. McAllister, Lieutenant Griswold, and Lieutenant Clitz, and of the order of the President of the United States thereupon.

"J. C. SPENCER."

III. In conformity with the foregoing instructions, and the orders from the Adjutant General's Office of the 14th of December, the general court martial of which Major Erving is president assembled at Fort Moultrie, December 28, 1842, and then and there, after mature deliberation, revised and reconsidered its proceedings, as follows:

FINDINGS AND SENTENCE OF THE COURT.

"The court, having maturely weighed and considered the evidence, is of opinion that 2d Lieutenant George W. Ayers, 3d artillery, is—

"GUILTY of the specification, except the words 'cut at';

"GUILTY of the charge."

SENTENCE.

And the court does sentence him, 2d Lieutenant G. W. Ayers, of the 3d artillery, "to be suspended from command for four months, to forfeit his 'pay proper' during that time, and to be reprimanded in such manner as the President of the United States may direct."

IV. The whole proceedings of the court having been transmitted to the Secretary of War, and laid

before the President for his decision thereon, the following are his general orders in the case :

"WAR DEPARTMENT, January 10, 1843.

"The proceedings of the general court martial convened for the trial of Lieutenant G. W. Ayers, of the 3d regiment of artillery, which was reassembled at Fort Moultrie on the 28th December, 1842, have been considered, and the said proceedings and the sentence of the court are approved by the president.

"In consideration of the inexperience of Lieutenant Ayers, and of the recommendation of a majority of the members of the court, the President is pleased to remit the said sentence, except that part of it which adjudges Lieutenant Ayers to be reprimanded in such manner as the President of the United States shall direct.

"And in execution of that part of the said sentence, the President directs that the commanding officer at Fort Moultrie communicate to Lieutenant Ayers, in the presence of the commissioned officers at that post, the great regret and displeasure of the President that an officer of such high character as Lieutenant Ayers is proved to possess should have suffered his passions to obtain the mastery over him so far as to cause him to inflict blows upon a soldier, without the existence of that extreme necessity which can alone excuse such an act. Lieutenant Ayers, in his defence, has entirely perverted the language and intent of paragraph 7 of 'general order' No. 53, dated August 20, 1842. The force to be employed in quelling an affray, or maintaining the peace, is that only which is necessary to secure and subdue the offenders. It does not consist of repeated blows, inflicted by way of punishment for past deeds, but must be such force as is *preventive* in its character, and must not exceed the strict necessity of the case requiring such acts of prevention. No officer has the authority in any case to inflict *punishment* for past offences of any kind. This authority is possessed by courts only. And it is regretted that Lieutenant Ayers should seek to screen himself under the terms of an order which was issued for the very purpose of guarding against the identical abuses of which he has been found guilty.

"The President trusts that this and other instances in which similar misconduct has been condemned by courts martial will satisfy the officers that it is the determination of those to whom the duty is confided, to see that the laws be executed, the rights of officers and soldiers protected, and an abuse existing in the army to a limited extent corrected effectually and finally. The citizens of the country will also learn that in entering the army they do not become the menials and the sport of the caprice of officers of any grade. The leniency shown in the remission of a part of the sentence of the court must not be mistaken; it will be no precedent for the future course of the Executive in similar cases that may occur after the promulgation of this order.

"J. C. SPENCER."

V. Lieutenant Ayers will be released from arrest, and resume his sword. The general court martial of which Major John Erving is president is hereby dissolved.

By order :

R. JONES, Adjutant General.

The following is the general order of the President of the United States, published to the army in 1822, mentioned in the instructions of the 13th of December, 1842, from the War Department, and then referred to the court, when directed to reconsider their proceedings in the foregoing case :

ORDERS No. 81.

ADJUTANT GENERAL'S OFFICE,

WASHINGTON, November 15, 1822.

Before a general court martial, composed of Captain J. F. Heileman, 2d regiment artillery, president; Captains Wilkins and Stanniford, of the 2d regiment of infantry; and Lieutenants Drane and Weber, of the 2d regiment of artillery, members; which convened at Fort Niagara, agreeably to 18th of July, was tried 2d Lieutenant E. Harding, of the 2d regiment of artillery, on the following charge and specifications :

CHARGE: "*Illegal and unmilitary conduct.*"

Specification 1. In this: that the said Lieutenant Edward Harding did, on or about the 30th day of May, 1822, at Fort Niagara, in the state of New York, inflict corporal punishment on Private Samuel Moore, of "D" company, 2d regiment of artillery, in violation of the rules for the government of the army of the United States.

Specification 2. In this: that the said 2d Lieutenant Edward Harding, of the 2d regiment of artillery, did, on or about the 31st day of May, 1822, at Fort Niagara, in the State of New York, cause John Hibbard, a private of "D" company, 2d artillery, to be tied and flogged one hundred lashes on his bare back, in violation of the rules for the government of the army of the United States.

Specification 3. In this: that the said 2d Lieutenant Edward Harding did, at Fort Niagara, in the State of New York, on or about the 31st of May, 1822, cause William McCollister, a private of "D" company, 2d artillery, to be tied and flogged one hundred lashes on his bare back, in violation of the rules for the government of the army of the United States.

Specification 4. In this: that the said 2d Lieutenant Edward Harding did, at Fort Niagara, in the State of New York, on or about the 31st of May, 1822, cause Jacob Goble, a private of "D" company, 2d artillery, to be tied and flogged one hundred lashes on his bare back, in violation of the rules for the government of the army of the United States.

To which the prisoner pleaded as follows :

"Not guilty" of the charge.

"Guilty" of the facts set forth in the 1st specification.

"Guilty" of the facts contained in the 2d specification, so far as having tied and flogged Private Hibbard, but not guilty of having given him one hundred lashes.

"Guilty" of the facts contained in the 3d specification.

"Guilty" of the 4th specification, so far as having flogged Private Goble, but not guilty of having tied him, or giving him one hundred lashes.

The court, on mature deliberation on the evidence adduced, find the accused, 2d Lieutenant Edward Harding,

"Guilty" of the 1st specification;

"Guilty" of the 2d specification;

"Guilty" of the 3d specification;

"Guilty" of the 4th specification, except "tying Goble, and giving him one hundred lashes;" and not guilty of the remainder of the specification; and "Not guilty" of the charge.

"The court find the prisoner not guilty of the charge, being of opinion that in the case of Moore, he (Lieutenant Harding) received insolence which deserved chastisement, in a civil or military community; and in the three latter instances, that forcible and exemplary and immediate measures were necessary to quell the spirit of insubordination then existing among the men, and for the good of the service.

"The court attach no criminality to the conduct of Lieutenant Harding, and do therefore honorably acquit him."

Which proceedings and finding were disapproved by Brevet Major General Scott, who, in the following order, directed the court to reconvene and revise its proceedings.

CONFIDENTIAL ORDERS.

ADJUTANT GENERAL'S OFFICE,

Eastern Department, Governor's Island, September 2, 1822.

The major general commanding cannot approve (for reasons given below) of the proceedings and finding of the general court martial of which Captain Heileman is president, in the case of Lieutenant Harding, and requests the court to reconsider the same, at least so far as respects the finding.

In the case of Moore, the court find that "he (Lieutenant Harding) received insolence which deserved chastisement in a civil or military community." This is not disputed, but the law of the land had provided a tribunal *other* than the officer who was the subject of the insolence, for the trial and punishment of the offence. [See the 6th and 24th articles of war, and also the imperious injunction, *that punishments shall be strictly conformable to martial law*.—General Regulations, article 2. par. 1.] There is no evidence that the blows were *necessary* to prevent the escape of the man; that is, to secure his person for a trial by court. On the contrary, Lieutenant Harding seems to have imagined (and the court justify the usurpation) that he was invested with full power to punish the offence on the spot. Thus have the prisoner and the court wholly disregarded the law and regulations on questions of this kind, as well as the recent orders from the head-quarters of this department, touching the cases of Lieutenants Clitz and Griswold.

There is no evidence that any previous spirit of mutiny existed, to afford a pretext for extorting a confession or for the punishment of that spirit before it had broken out into overt acts, as in the other three cases. It rather appears that the mutiny, which did in fact afterwards occur, was excited by the first illegal flogging. Evidence enough is recorded to render this conclusion highly probable, although, from the manner in which the prisoner was suffered to plead, the record is very barren as to many material circumstances. Thus the judge advocate neither offered in evidence the prisoner's letter, transmitted from head-quarters, nor has he returned it with the record. "In the three latter instances, (the flogging of Hibbard, McCollister, and Goble,) the court find that *forcible and exemplary and immediate measures were necessary to quell the spirit of insubordination then existing among the men, and for the good of the service*." If the court mean by "forcible and immediate and exemplary measures," the flogging inflicted the next morning, after the mutiny was in fact *quelled*—that is, after the three principals were lodged in the guard house, the night before, and who safely remained there until taken out to be flogged without trial—the major general commanding utterly disagrees with the court. As *punishments*, nothing could have been more illegal than those floggings; and, as a *means of procuring confessions*, they were *inquisitorial*, and entirely at war with the institutions and feelings of the country.

If in the act of quelling the mutiny, Lieutenant Harding had found it necessary to cut down the mutineers, or, even if death had been inflicted, there is no doubt but he would have been honorably acquitted by any tribunal, military or civil.

The major general commanding would have been content with some slight punishment in this case considering Lieutenant Harding's high standing, up to the date of this transaction; but he does not see

how the court can wholly acquit him, and at the same time sentence *capitally* the subject of illegal flogging.

The court will therefore revise its proceedings in this case.

By order of Major General Scott :

P. H. GALT,

A. D. C. and Act. Ass't Adj. General.

The court, having reconvened on the 19th of September, decided "that they are of opinion that they will not alter the finding of the court martial in the case of 2d Lieutenant Edward Harding. In expressing this opinion, the court beg leave to offer the following reasons :

"That, in the opinion of the court, Lieutenant Harding was justified by the circumstances of the several cases in which he committed the acts for which he stands charged with illegal and unmilitary conduct : 1st, in the case of Moore, he only chastised personal insolence deservedly ; 2d, in the three latter cases, to wit : inflicting corporal punishment on McCollister, Hibbard, and Goble, he was moved by an ardent desire for the good of the service, and an interest to deter the remainder of the men in the garrison, by severe example, from committing the like offence with the men in question, which, it appears by the testimony on the record, they were disposed to be guilty of. The court, from the evidence before them, do not consider that the insubordinate and mutinous dispositions existing in the garrison, generally, were quelled by confining the three principals detected in the fact, and securing them in the guard house ; on the contrary, they conceive that the ramifications of the plot, engendered in the brains of those designing and insubordinate individuals, were so extensive that it was more than probable that their being held in disgraceful duress would instigate their companions to further acts of guilt.

"For these reasons, the court have been obliged to adhere to its former finding and decision in the case."

The whole of the proceedings in this case having been submitted to the President of the United States, he highly approves of the course pursued by Brevet Major General Scott in returning the original proceedings of the court, as well as the reasons advanced by him in his confidential order.

It is a matter of serious regret that these reasons have not had due weight with the court, and that it has refused to alter the finding in the case ; and the President is therefore compelled to express his marked disapprobation and censure of the conduct of its members, in attempting, as they have done, to sanction the unmilitary and illegal conduct of the prisoner.

The members of the court must be sensible, on reflection, that they have, in these proceedings, violated their duty and the law, and the President only refrains from a more severe and decisive course in regard to them, from the consideration of their former good conduct and their length of service.

The President hopes that, in ordering Lieutenant Harding to duty, he, as well as others, *will be warned from attempting to enforce discipline* in the army by measures which are in open and direct violation of the law of the land.

The revised proceedings and sentence of the same court, in the case of Private McCollister, are disapproved, and the prisoner is ordered to be released and returned to duty.

The general court martial of which Captain J. F. Heileman is president is dissolved.

By order of the President of the United States.

CHARLES I. NOURSE,

Acting Adjutant General.

REPORT OF THE COURT OF INQUIRY.

The Naval Court of Inquiry, convened by order of the Secretary of the Navy, by a precept under his hand bearing date the 6th day of March instant, for the purpose of inquiring into the conduct of Captain ROBERT F. STOCKTON and officers, in relation to the experiments and proofs which preceded the construction, and the proof and subsequent explosion, of one of the great guns of the Princeton, occasioning the awful and distressing catastrophe which has recently occurred on board the said ship, and report the opinion of said Court on the matters thus referred to it, respectfully submit to the consideration of the Hon. the Secretary of the Navy, the evidence which has been laid before it in relation to the premises.

In further performance of the duty imposed on it, the Court further respectfully report:

That, in pursuing the investigation with which it has been charged, the Court was limited to the facts and circumstances immediately connected with the captain and officers of the Princeton, anterior to and immediately attending the explosion of one of the large guns on board that vessel on the 28th February last. The investigation has satisfied the Court—

That, in the year 1839, Captain Stockton being in England, his attention was attracted to the extraordinary and important improvements, which had recently been introduced into the manufacture of large masses of wrought iron as a substitute for cast iron, for objects which required a combination of strength and adhesiveness or toughness. Large shafts for steam-engines had been thus fabricated, which experience had demonstrated to be superior in those qualities which were desirable to the same articles manufactured of cast iron.

These circumstances appear to have led Captain Stockton to consider the question, how far the same material might be employed in the construction of cannon of a large caliber. He appears to have been animated by motives the most patriotic, stimulated by the laudable desire of being himself instrumental in promoting the honor of his country, and of elevating that branch of the service with which he was personally connected. To what extent his inquiries were carried, the Court has not been advised; but it is in evidence that he did advise and consult with three gentlemen, possessing, from their scientific acquirements and practical experience on such subjects, very superior qualifications in questions of this character, and whose opinions were entitled to high respect. Mr. William Young, Captain Ericsson, and Francis B. Ogden, Esquires, are the gentlemen to whom allusion is made. After much deliberation and several consultations, with calculations furnished from the same quarter, Captain Stockton determined upon the construction of a gun of the proposed dimensions, for the purpose of testing the opinions of scientific men by the results of experience. A cannon was accordingly made at the Mersey works, of Yorkshire iron, which being approved of, was shipped to the United States. Having been properly prepared for the purpose, this gun was carried to Sandy Hook and subjected to what was deemed the proper test. After the first firing, preparations were made to mount the gun. In doing this a crack was perceived opposite the chamber, which induced Captain Stockton to have the breech strengthened by putting bands around it. These bands are represented as being three and a half inches in thickness. With this additional strength given to the defective part of the gun, the experiments were renewed, and the result was a decided conviction upon the minds of all connected with them that in general the anticipations of Captain Stockton were perfectly realized; and, secondly, that if a gun of this construction should yield to the force of the trial, it would be by a simple opening, and not, as in cast iron, a violent disruption and scattering of the fragments.

The success of these experiments was such as to decide Captain Stockton forthwith to direct the construction of another gun of a similar character, to be made of American iron, which is usually regarded as superior in strength and tenacity to the English iron. This second gun (the same which exploded on board the Princeton) was constructed with a chamber similar to that of the first gun, with an additional thickness of twelve inches at the breech—a difference, even if the metal were only of equal goodness, far more than sufficient to compensate for the bands by which the first had been fortified.

Application was made to Col. Bomford, of the Ordnance department of the Army, who, it is well known, has been professionally occupied in experimenting upon guns of a large caliber, and his opinion requested as to the proper proof to which such a gun ought to be subjected. The proof suggested by Col. Bomford as a suitable one will be found in his letter of November 25, 1840, appended to the record. The new gun constructed by order of Capt. Stockton exceeded in dimension and weight, consequently should also have surpassed in strength, that contemplated by Col. Bomford, they being of the same caliber, and the proof to which this cannon was subjected was much more severe than what was proposed as sufficient by that experienced officer.

In view of all the circumstances thus briefly adverted to, but minutely detailed in the evidence which is spread upon the record, the Court entertains a distinct and confident opinion that, in originally forming the plan for the construction of large guns, Captain Stockton proceeded on well-established practical facts; that, in coming to a decision upon the feasibility of the contemplated project, he did not rely upon his own theoretical opinions, but resorted to men of science and practical skill for advice, and that he was fully sustained by their judgment in every particular; that a series of experiments and trials with the two guns fully sustained the deductions of the gentlemen whose advice was sought, and justified the most assured confidence in the durability and efficiency of the gun.

In regard to the mode of loading and firing on every occasion, and emphatically that which was followed by the explosion, it is established by the fullest proof, to the entire satisfaction of the Court, that every care and attention which prudence and professional capacity could dictate was observed. No shadow of censure in this respect can be attached to any officer or any of the crew of the Princeton.

In regard to the conduct and deportment of the Captain and Officers of the Princeton, on the occasion of the deplorable catastrophe which occurred on the 28th February last, the Court feels itself bound to express its opinion that in all respects they were to be expected from its gallant and well-trained officers, sustaining their own personal character and that of the service, marked with the most perfect order, subordination, and steadiness.

In conclusion, the Court is also decidedly of opinion that not only was every precaution taken which skill, regulated by prudence and animated by the loftiest motives, could devise, to guard against accident, but that Capt. Stockton, Lieut. Hunt, and Mr. King, the gunner, who had attended to and directed all the experiments and trials of these guns, exhibited only a due confidence in what they had witnessed in placing themselves on every occasion, and particularly on that of the explosion, almost in contact with the gun, and in a position apparently not only more dangerous than any other, but that which might rationally have been deemed the only perilous situation on board the vessel.

The Court, having thus completed its business, adjourned *sine die*.

W. C. BOLTON, President.

RICHARD S. COXE, Judge Advocate.

Communications.

U. S. MILITARY ACADEMY.

MR. EDITOR: You lately republished from the *Globe* an article in vindication of the Military Academy at West Point. May I ask you to add the following remarks on the same subject, introduced chiefly for the purpose of exhibiting a statement of the conditions in life from which the cadets are drawn?

It will be seen, we think, that a more equal representation of the different classes of the country could not well be made, and that the Representatives of the people, who, under the present system of appointing the cadets, *each designate a youth residing in his Congressional district, and nominate him for appointment to the President*, deserve the thanks of their constituents, for the fair and faithful manner in which they have attended to their interests.

Instead of the appointments being confined to the wealthy and influential classes, as asserted by the enemies of the institution, and unfortunately too hastily credited by others, it is proved that the great body of the cadets are taken, as they should be, from the farmers, mechanics, and mass of the people; and that the *wealthy* and *indigent* are equally represented, and form a very small part of the Academy, as they do of the community. How, indeed, could a different result be anticipated, as the cadets may be said to be selected by the people themselves, from among those candidates of the nation at large, best qualified for the station, in as much as they are selected by the representatives of the people.

It behooves, therefore, those most interested, *the mass of the people*, to support and cherish the *only* institution, not only in, but of the Country, whereby the brave son of the poorest among them can, unaided and alone, not only successfully compete with the rich and influential, in acquiring knowledge and virtue, but have an equal share in the honor of defending his country, and of leading her armies to victory.

Efforts have been made and are still making to destroy this institution, and we earnestly beg every American to inform himself of the causes which produced its establishment, forced its enlargement, and have successfully sustained it to the present day. There may be reasons, though we are not aware of them, that would call for its *modification*; but there can be none, growing out of the interests of the country, that would require its *abolition*. We ask those opposed to the institution to study its history, and carefully examine into its administration, character, and influence. We feel assured that in every step of a candid investigation, they will find cause to admire and support what they now condemn and oppose.

What would be the immediate consequence of abolishing the Military academy? The vacancies occurring in the army would then be filled by persons already arrived at manhood, who would be at once appointed 2d lieutenants, and be called on to perform the duty appertaining to their station with the several corps to which they would be attached.

Can it be supposed that they would be *at once* qualified for this duty, however much latent talent they possessed? or how many years would they be obliged to learn themselves, what it would be their duty immediately to perform and to teach to others? Would they at that age be as capable of learning the theory or practice of their profession, as if they had entered the service as now, cadets of sixteen, elastic in body and mind, with no vicious habits or depraved tastes, stimulated by youthful ardor, emulation, and the force of example, and provided with opportunity, books, and skilful teachers? Would the candidates for these vacancies be taken, as now, from among the worthy sons of the honest farmers and mechanics, equally selected from every Congressional district in the union; or would they be chosen from among the idle and dissolute of the rich and influential, confined to a few of the large neighboring cities, seeking rather a support or occupation, than the performance of a national service? Let every one answer these questions, and then conscientiously give their voice for one or the other of the two systems!

The ultimate consequence would be the destruction of the present elevated character of our Military establishment, the almost total extinguishment of military science in the country, the injury of our great militia, the diminution of our national renown, and the weakening of the bonds of our Union.

Why did the patriots of our revolution, and the statesmen and legislators of our early history, all labor for the establishment of an institution for military education? Because they had been observers as well as participators of the physical and moral dangers of a military life. They had been taught by experience that the higher class of duties of a soldier and capacity for command, could be best learned and exercised by those whose faculties had been carefully cultivated. They knew that knowledge purified and elevated the mind of its possessor, and subdued what was mean and selfish to the control of duty and virtue. And they were convinced that in a republic like ours, it was as unwise as unsafe for the military to be separated in feelings, interests, or habits, from the other classes of the community.

We see, therefore, that General Knox, then Secretary of War, the first year of the organization of the present Government, advocated the establishment of efficient institutions for the military education of youth, as a means of diffusing that knowledge among the militia. Gen. Washington, as early as 1793, suggested to Congress, "whether a material feature in the improvement of the system of military defence ought not to be, to afford an opportunity for the study of those branches of the art which can scarcely ever be attained by practice alone." In his annual communication in 1796, he observes: "The institution of a military academy is also recommended by cogent reasons. However pacific the general policy of a nation may be, it ought never to be without an adequate stock of military knowledge for emergencies. The first would impair the energy of its character, and both would hazard its safety, or expose it to greater evils, when war could not be avoided. Besides that, war might not often depend upon its own choice. In proportion as the observance of pacific maxims might exempt a nation from the necessity of practising the rules of military art, ought to be its care in preserving and transmitting

by proper establishments, the knowledge of that art. Whatever argument may be drawn from particular examples, superficially viewed, a thorough examination of the subject will evince that the art of war is extensive and complicated; that it demands much previous study; and that the possession of it in its most improved and perfect state, is always of great moment to the security of a nation. This, therefore, ought to be a serious care of every government, and for this purpose an Academy, where a regular course of instruction is given, is an obvious expedient which different nations have successfully employed."

These opinions of Gen. Washington, so truly and forcibly expressed, were retained to the end of his life, and confirmed in his letter on the subject, to Gen. Alexander Hamilton, written two days before his death.

Nor did President Adams fail to bring before Congress the importance of proper and systematic military instruction, in which he stated the honor and safety of the country was deeply interested. Mr. McHenry, his Secretary of War, a gallant officer of the Revolution and a member of Gen. Washington's cabinet at the close of his administration, gave the subject a careful investigation, and in two special reports illustrated the beneficial consequences to be anticipated from a Military Academy. "No sentiment can be more just than this," said he, "that in proportion as the circumstances and policy of a people are opposed to the maintenance of a large military force, it is important that as much perfection as possible be given to that which may at any time exist."

"It is not, however, enough, that the troops it may be deemed proper to maintain, be rendered as perfect as possible in form, organization, and discipline: the dignity, the character to be supported, and the safety of the country further require, that it should have military institutions capable of perpetuating the art of war, and of furnishing the means for forming a new and enlarged army, fit for service in the shortest time possible and at the least practicable expense to the state."

He then goes on to speak of the impossibility of suddenly extending to every essential point our fortifications, and therefore that military science in its various branches ought to be cultivated with peculiar care in proper nurseries, so that a competent number of persons may be prepared and qualified to act as engineers, and others as instructors to additional troops, so as to substitute the elements of an army for the thing itself.

Mr. Jefferson, from the following extract from his message, calling the attention of Congress to the subject, evinced the deep interest he felt, in having an institution adequate to the wants of the country. "The scale on which the Military Academy at West Point was originally established, is become too limited to furnish the number of well instructed subjects in the different branches of artillery and engineering, which the public service calls for. The want of such characters is already sensibly felt, and will be increased with the enlargement of our plans of military preparation."

In the succeeding administration, Mr. Madison repeatedly urged upon Congress with great earnestness, the welfare of the Military Academy. In his annual message in 1810, he states, "The corps of engineers, with the Military Academy, are entitled to the early attention of Congress." "But a revision of the law is recommended, principally with a view to a more enlarged cultivation and diffusion of the advantages of such institutions, by providing professorships for all the necessary branches of military instruction, and by the establishment of an additional Academy at the seat of Government or elsewhere. The means by which wars, as well for defence as of-

fence, are now carried on, render these schools of the more scientific operations an indispensable part of every adequate system. Even among nations whose large standing armies and frequent wars afford every other opportunity of instruction, these establishments are found to be indispensable for the due attainment of the branches of military science, which require a regular course of study and experiment. In a country, happily without the other opportunities, seminaries where the elementary principles of the art of war can be taught without actual war, and without the expense of extensive and standing armies, have the precious advantage of uniting an essential preparation against external dangers, with a scrupulous regard to internal safety. In no other way, probably, can a provision of equal efficacy for the public defence be made at so little expense, or more consistently with the public liberty."

In 1815, Mr. Madison, in his last message, urged "an enlargement of the Military Academy, and the establishment of others in other sections of the Union. If experience has shown in the recent splendid achievements of the militia, the value of this resource for public defence, it has shown also, the importance of that skill in the use of arms, and that familiarity with the essential rules of discipline, which cannot be expected from the regulations now in force."

Mr. Monroe pronounced this high commendation upon the discipline and government of the Academy, in his annual message in 1822: "Good order is preserved in it, and the youth are well instructed in every science connected with the great objects of the institution. They are also well trained and disciplined in the practical parts of the profession. It has always been found difficult to control the ardor inseparable from that early age, in such a manner, as to give it a proper direction. The rights of manhood are too often claimed prematurely: in pressing which too far, the respect which is due to age, and the obedience necessary to a course of study and instruction, are lost sight of. The great object to be accomplished is, the restraint of that ardor by such wise regulation and government, as by directing all the energies of the youthful mind to the attainment of useful knowledge, will keep it within a just subordination, and at the same time elevate it to the highest purposes. This object seems to be essentially obtained in this institution, and with great advantage to the Union."

"The Military Academy forms the basis in regard to science, on which the military establishment rests. It furnishes annually, after due examination and on the report of the academic staff, many well informed youths, to fill the vacancies which occur in the several corps of the army, while others who retire to private life, carry with them such attainments as, under the right reserved to the several states to appoint the officers, and to train the militia, will enable them, by affording a wider field for selection, to promote the great object of the power vested in Congress, of providing for the organizing, arming, and disciplining the militia."

We could go on accumulating evidence upon evidence, derived from the wisdom, experience, and patriotism, not only of the other great men of the succeeding administrations, but also of those who have formed the Military committees of Congress, to show the vital importance to the country, in which they have viewed the existence of the Military Academy:

And are we going to disregard the high authority of these men, and to destroy what they labored so earnestly to accomplish, just as we are prepared to gather the fruits of their exertions? And why? Because of the clamor raised by the disappointed and revengeful sires of worthless sons, who have failed to pass through the institution. But it is said that the expense of the Academy is more than the country

can afford. Mr. Madison tells us that *in no other way can a provision of equal efficacy for the public defence be made at so little expense.* Cannot our young and flourishing Republic afford to maintain what is essential for her independence and protection? As great as the cost of this institution is said to be, it is several thousand dollars less annually, than is required to keep afloat one of the second class frigates of our navy. No one would surely desire that there should be a single frigate less in commission, because it was an expense to the country. The service rendered both by the frigate and the Academy, is for the benefit of the country alone, and their expense ought to be borne by the country. Both are necessary, and both return more than an equivalent for their support.

Another objection brought against the Military Academy, is the education of the cadets at the public expense. Who is benefited by this education? Is not all the knowledge and information acquired by the cadet applied to the service and defence of the country? Does it advance him in the road to wealth or power, or is it not all exerted for the honor and safety of his country? Would not the same application in any other pursuit have procured him more than the bare support which he receives for the service of his life? Who then ought to pay for his education, especially when such an education is essential alone to the country, and must be paid for in some shape, or at some time, and can be better and more economically provided at that time of life than at any other.

Although we have extended our remarks so much farther than proposed, we are aware that we have said nothing new, and have left unsaid much to the purpose. So difficult is it to say little on a subject where much is felt. We must now, however, return to our tabular statement.

Statement, exhibiting the circumstances in life of the parents of the cadets of the U. S. Military Academy, in January 1842, and January 1844.

Occupation of parents.	1842.	1844.
Number of cadets whose parents are or were farmers or planters, - - -	59	61
Whose parents are or were mechanics, - - -	14	12
Whose fathers are or were lawyers or judges, - - -	27	25
Whose parents are or were merchants, - - -	18	15
Whose parents are or were boarding house or Hotel keepers, - - -	5	2
Whose fathers are or were physicians, - - -	12	15
Whose fathers are or were of the army, navy, or marine corps, - - -	14	16
Whose fathers are or were clergymen, - - -	4	6
Whose fathers are or were in the civil employment of the General or State Government, - - -	5	15
Miscellaneous, bank officers, editors, professors, engineers, masters of vessels, - - -	15	11
Number of cadets the occupation of whose parents were not stated. These are orphans or have only mothers, - - -	48	34
	221	212
Of these there were without fathers, - - -	26	57
Without fathers and mothers, - - -	22	16
Total, - - -	48	73
Number of those whose parents were stated to be in moderate circumstances, - - -	156	
In reduced circumstances, - - -	182	26
In indigent circumstances, - - -	26	
Independent in life, - - -	26	
Circumstances unknown, - - -	18	

ON THE FORM AND BURSTING OF GUNS.

It is a source of surprise that artillery, which from its first introduction among the weapons of war, has ranked so high in its importance, either theoretically or practically, and relative to which such numerous experiments at different times have been made, should be at the present day unsettled in some of its most important principles. A gradual improvement has indeed been in progress up to the present period; it still however appears to be imperfect both as regards form and construction.

The form of guns, with the exception of some of late manufacture, is principally produced from the union at their bases of two or more frustrums of cones, which, for the same caliber, vary frequently both in length and in the inclination of their elements, but taking as a fair specimen one of the forty-two pounders of this fort, we have for some of its principal dimensions, as follows:

Diameter at breech, about - - - 24 inches.

Diameter at 20 inches from bottom

of bore, - - - 22½ "

Whence it appears that there is a difference of 1½ inches in the diameter of a cross section through the bottom of the bore and one at 20 inches distant.

We will now examine the circumstances of the discharge of such a piece. The charge, including the wad and ball, occupies about twenty inches of the bore; at the moment of inflammation of the powder, the explosive gasses generated create a certain degree of pressure, which is resisted by the bottom of the bore, the cylinder of metal surrounding the charge, and the ball, (as the wad opposes no sensible resistance,) or in other words the inflamed gases are confined in a cylindrical box, whose ends are the bottom of the bore and the ball; it then happens, necessarily, that each square inch of the surface of this cylinder must be subjected for the moment to the same strain, and consequently should be of equal strength, or should have the diameter of each cross-section the same throughout. By referring to the foregoing statement of dimensions, it will be seen that in a medium forty-two pounder there is a difference of nearly 1½ inches in its diameters at the extremities of the charge, whence a ring of metal whose exterior surface is a cylinder of the same diameter as the breech and equal in length to the charge, and whose interior surface is a frustrum of a cone whose base joins one extremity of the cylinder, and having the diameter of its other extremity less by 1½ inches, has been removed from the body of the gun, as it appears, without a sufficient reason. The consequence of this defect of form, joined to a deficiency of metal in this part of the piece compared with the remaining portion, has been, that almost without exception, the guns burst if overcharged between the trunnions and breech, the weakest part being at the circle of contact of the bore and ball. By the time that the inertia of the ball is overcome a portion of the expanded gases has escaped between it and the bore, and the remainder is both reduced in volume by cooling, and has increased space to occupy, from the movement of the projectile; so that from the moment the ball is put in motion until it leaves the muzzle, the strain on the gun becomes less and less requiring a diminished quantity of metal to withstand its pressure.

From the foregoing remarks it would appear that the proper form for ordinary pieces would be a cylinder from the breech to a distance indicated by the greatest length of charge, and a curve or cone thence to the muzzle, the dimensions of which, as well as those of the cylinder, can only be determined by experiment depending on the kind and quality of the

metal.* This form for heavy artillery is not a new suggestion, as it is nearly the same as that of many of the carronades of the Navy, and something similar was proposed by Count Rumford and others many years since, and furnishes a good instance of the slowness with which prejudices for old and established forms are overcome, although founded in error. It is only of late years that the European artillery (from which our own has been modeled,) has approximated to a form which, apparently, would have been the first to have suggested itself. The subject latterly has been definitely decided in this country, probably, by the accurate and valuable experiments of the chief of the ordnance corps, who, by an ingenious modification of the common gun, has determined with precision, and in a satisfactory manner, the proper form for different descriptions of ordnance, and which agrees, I believe, altogether with the foregoing theoretical forms.

Although in these remarks I have in the first place taken into consideration the forms of cannon, it is not the principal defect in their construction, as the kind and quality of the metal used, and mode of casting, are of much more importance, and no other way of arriving at any thing like perfection in their manufacture can be looked for, than by the establishment of a National foundry, whose operations are superintended and controlled by officers of the army, men, whose reputations are involved, and who have every inducement to act for the good of the service.

By the present system cannon are furnished by contract, and, of course, it is to the interest of the contractors to furnish them with as little cost to themselves as practicable, and nearly the only inducement to care in their construction, is the loss which accrues from the bursting by the proof charges; and if they can be made to bear this, every thing is supposed to be gained, without reflecting, or perhaps caring, that those very proof charges may have so strained the bad metal of the guns, that a few more firings, even with the common service charges, may cause them to burst, destroying those engaged in their service, two cases of which occurred at this post within the past year, and as necessity compels us to make use of similar pieces in our target practice, it is probable that the safer place would be rather at the target than at the gun, notwithstanding the accuracy of fire, for a ball would possibly injure but one, whilst an explosion would endanger the lives of many.

Other causes in addition to those already mentioned, although of less frequent occurrence, contribute to the bursting of guns, and of which I shall take a passing notice. It is a fact well known to many, that brittle substances, especially if metallic, are susceptible but of a limited number of maximum vibrations; for example, a bell whose clapper is of large size will, after having been rung possibly for years, at length crack without any increase of concussion; and in a similar manner a cast metal gun after a certain number of discharges will burst, although no greater, and even a less, quantity as powder be employed. This singular circumstance is probably occasioned by the tendency to a gradual arrangement of the particles of the metal into crystals of larger size, being assisted by the vibratory motion caused by the discharge.

Another cause of bursting arises from careless loading, by which means the ball rolls back from the cartridge, if the axis of the piece be horizontal or slightly depressed, and a loose wad be used; by this means a space is left between the two, which, if of any considerable distance, is certain to cause destruction to the gun, if fired with an ordinary charge, the

reason for which, has never been satisfactorily explained; the included air probably assists by means of its great expansion caused by the inflamed gunpowder. Should the projectile be defective in sphericity, it would be likely to become wedged in the bore, producing a similar result.

In making use of a number of bodies in lieu of a single shot, if loosely inserted, and especially if of irregular shape and hard material, by becoming wedged in the discharge, will frequently cause the destruction of the gun.

The kind of powder made use of is an important consideration in the service of artillery. If a powder be used which takes fire instantaneously, percussion powder for example, the consequence will be that the breech of the piece will be shattered into many fragments, for no time being allowed to overcome the inertia of the projectile, it acts as if it were a part of the gun itself, and is scarcely, if at all, removed from its position.

It is astonishing to observe the immense force which a heavy body opposes a sudden transition from a state of rest to that of a high velocity. I observed, whilst assisting once in some ordnance experiments, that a solid copper ball of about three-fourths of an inch in diameter, connected by a neck one-fourth of an inch in thickness to a piece of copper, to which a velocity of about fifteen hundred feet per second was suddenly given, invariably was torn off by the inertia, for, from the manner of conducting the experiment, no other force could have operated; hence this small ball of metal exerted a force by its inertia of not less than one thousand pounds.

From what has preceded it is evident, that gunpowder, if made to burn too quickly, will not only defeat its object by giving a very short range, but also would endanger the gun itself. If on the contrary it burns slowly, a portion only is consumed before the ball leaves the piece; the proper kind, therefore, is of a quality between the two.

The metals principally made use of in the manufacture of artillery, are cast iron and bronze—the former for heavy ordnance, and the latter for field-pieces; each of these metals has its peculiar advantages, rendering them suitable for the particular description of pieces to which they are appropriated. A cast iron gun, on account of its extreme hardness, can be fired many hundred times without material injury to its bore or vent, is very cheap, does not easily rust, and being a worse conductor of heat than most metals, ranges far, as the inflamed gases are not so much reduced in volume, caused by the cooling effects of the piece. Its material defects are, its little tenacity and brittleness, bursting into several fragments with small charges.

Bronze, being more tenacious than cast iron, has its pieces of corresponding caliber of less weight, and therefore is made use of for those guns which are required to be moved rapidly: it is not injured by oxide, is not thrown into fragments by bursting, and, when worn out, is valuable as old metal. Its defects are its softness and, comparatively, low degree of fusion, wearing out rapidly both in the bore and vent, and its cost.

Wrought iron has been attempted repeatedly in the manufacture of artillery, but the great difficulty of welding together, thoroughly, large masses, has heretofore been an insurmountable obstacle to its employment, and from the defects of imperfect welding, a wrought iron gun is of dangerous service. Could it be manufactured in a perfect and cheap manner, it would in some cases be of service on account of its great tenacity, which would admit of considerable reduction of weight, nevertheless as a certain weight in the gun is necessary to prevent the destruction of its carriage by the recoil, it is doubtful whether much would be gained by its employment.

* Chambered cannon, of course, would have an additional ring of metal around that portion of the bore occupied by the shell, to make it equivalent to a cylinder in strength.

It may be proper to state in connection that, in the large majority of cases, the splinters of a gun that has burst, are thrown in directions either parallel or perpendicular to the axis of the piece, and thereby indicating the proper position to be taken near a doubtful cannon.

G. W. R.

Fort Monroe, Va.

ARMY.

WAR DEPARTMENT,

March 5, 1844.

Paragraph 984, ARTICLE LXXVII, "GENERAL REGULATIONS FOR THE ARMY," and the Regulations of November 21, 1842, and of February 17, 1844, relative to allowances for transportation, are hereby rescinded and supplied by the following General Regulations:

1. Officers who travel under written and special orders from their proper superiors, without troops or military stores, beyond the range of their local duties, not less than ten miles, shall be allowed seven cents per mile if on Court Martial service, and ten cents if on any other duty; or if they prefer it, the actual cost of their transportation for the whole journey, provided, they shall have travelled by the shortest mail route, and in the accustomed, or other reasonable manner.

2. Officers shall not, under any circumstances, be allowed mileage by any other than the shortest mail route. Should it become necessary to travel by any other route in the execution of orders they shall be allowed either the actual expenses for their transportation, or mileage by the shortest mail route at their option.

3. No officer shall be allowed transportation for a servant, unless the services of one are actually necessary by reason of wounds or disability; and should said necessity exist, he will be allowed the actual expenses of the servant's transportation, or six cents a mile, at his option.

4. It is desirable that details for Court Martial service should, as far as practicable, be made from the officers serving at posts and stations nearest to the point at which the court is to be held.

5. The travelling allowances to officers who may travel without special instructions from their superiors, but upon duty which conveys the general authority or imposes the necessity to travel, shall solely be the actual expenses of transportation and portage and no more.

6. Superior or commanding officers will forward to the Adjutant General's office copies of all orders issued to their subordinates involving the expense of transportation, and endorse thereon the reasons which rendered the issuing of such orders necessary. Such orders shall always define the extent of the journey directed to be performed.

WM. WILKINS,

Secretary of War.

The foregoing revised REGULATIONS are published for the government of the Army.

By ORDER:

R. JONES, Adj. Gen.

ADJUTANT GENERAL'S OFFICE,
Washington, March 7, 1844.

Naval Intelligence.

Correspondence of the United States Gazette.

U. S. SHIP DELAWARE, HAMPTON ROADS,
March 5, 1844.

We made this port on the 4th inst., after a passage of 37 days from Gibraltar, and 51 days from Port Mahon, leaving there on the 13th of January.

Our cruise of three years has been eminently successful. On the two most important naval stations, the Brazils and the Mediterranean, we have in all been 457 days at sea; have anchored twenty-three times in twelve different ports, and have actually run, as per log, 35,543 miles. Few of us but will remember with pleasure (thanks to our superior officers, and to a gracious Providence,) the cruise of the noble Delaware.

The following is a list of the officers:

Commodore, Charles Morris.

Captain, Charles Stewart McCauley.

Lieutenants, Samuel Barron, (Executive officer,) Charles C. Turner, Spencer C. Gist, Stephen C. Rowan, Cicero Price, Otway H. Berryman, and William Ross Gardner.

Fleet Surgeon, Gustavus R. B. Horner; Assistant Surgeons, Stephen A. McCreery, James B. Gould, and Daniel L. Bryan; Purser, Samuel P. Todd; Chaplain, Charles Henry Alden; Acting Masters, George W. Doty and William M. Caldwell; Professor of Mathematics, William B. Benedict.

Marine Officers, Capt. Alvin Edson; 2d Lieuts. W. A. T. Maddox and William B. Slack.

Midshipmen, Abner Read, James M. Ladd, John R. Hynson, James D. Bullock, Robert Clay Rogers, Maurice Simons, John Quincy Adams Crawford, Jonathan H. Carter, Wm. D. Austin, Peter Kemble, Edw. C. Pasteur, Edward Brinley, John R. Barker, Thos. W. Brodhead, William H. Fauntleroy, Jesse M. Smith, Richard Lyman Law, William Gibson, John Wilkes, Jr., Thomas C. Harris, William Mitchell, Albert Almand, Pendleton G. Watmough, and Robert Storer.

Commodore's Secretary, John F. Hoff; Commodore's Clerk, Amos T. Jenkins; Captain's Clerk, David St. Leon Porter; Purser's Clerk, Jas. Todd.

Marriage.

On the 5th instant, in this city, Major A. D. STEWART, Paymaster U. S. Army, to MARY B. ATKINSON, daughter of the late Thos. BULLITT, of Louisville, Ky.

Deaths.

At Mount St. Mary's College, Emmittsburg, Md., ROBERT RANDOLPH DULANEY, second son of Capt. BLADEN DULANEY, of the U. S. Navy.

At New York, on Saturday the 9th inst., Captain JOHN H. CLACK, late of the U. S. Navy.

AGENCY FOR CLAIMS AT WASHINGTON.—The Undersigned offers his services as Agent for Claims upon either of the Departments or Congress.

Particular attention will be paid to the settlement of accounts of disbursing Officers, who may find it inconvenient to attend personally; especially those of the Navy. His experience and practical knowledge will afford many facilities.

Charges will be moderate and regulated by the amount claimed and the extent of services required. Communications (post paid) will receive immediate attention.

CHAS. DE SELDING,

Office, Sixth-street, next to corner of F.

References.—Commodore Charles Stewart, Commodore John Downes, A. O. Dayton, Esq., 4th Auditor, Treasury Department; A. T. Smith, Esq., Chief Clerk, Navy Department; John C. Rives, Esq., Washington; John Boyle, Esq., Washington; James Hoban, Esq., Washington; Chas. O. Handy, Esq., Purser, U. S. N.; John De Bree, Esq., Purser, U. S. N.; R. R. Waldron, Esq., Purser U. S. N.; Saml. P. Todd, Esq., Purser, U. S. N.
Jan 1-17.

QUARTERLY ARMY REGISTER.—The second number, which has been kept back for the "Official" Register to make its appearance, is now in press and will be ready in a few days.

March 17.